From: "Tom" <tom2wander@earthlink.net> on 10/30/2004 06:40:23 PM

Subject: Electronic Fund Transfers

Docket No. R-1210

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Reg. E, and proposed revisions to it, do not contain adequate consumer protections.
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1. Check electronification subverts consumer intent.

When a consumer writes a check, the consumer expects it to be processed as a check. It does not matter how many so-called authorizations the consumer has supposedly agreed to. If you did a poll, I'd bet 99% of consumers would have absolutely no idea what the implications are of "electronification". Education is, historically, not a viable solution to this problem. A check is for checking accounts. Credit and debit cards are for electronic accounts. Just like a car is for driving and a plane is for flying. Both are transportation, but they are very different in their consequences. When you buy a plane ticket, you don't expect to be flown halfway there and then put on a bus.

2. What are the adverse implications of check electronification?

A.
The consumer has no proof of payment. Previously, a returned, cancelled check with the signature or imprint of the payee was readily accessed from home records by consumers. This was incontrovertible proof of amount of payment, and of payment receipt. "Your check is your receipt". With electronification, the "proof" is a debit from the checking account. The details of this debit are not consumer controlled, are not readily accessible, and are not free of charge. Consumers do not think about this until they need it. Certainly they are not thinking about it when they read 8 pages of fine print written by a team of Harvard-trained lawyers in a credit card agreement, for example.

B.
The burden of proof for erroneous or fraudulent draws on a consumer's bank account is shifted to the consumer. Worse, the consumer has no means for providing that proof. There is no verifiable signature on a check. There is no check at all, just an electronic claim. If the bank should finally agree with the consumer, the consumer's funds are nevertheless unavailable for a period. This is a major hardship for most consumers, and can lead to a cascade of bounced, bank-fee-generating checks. If the bank does not agree with the consumer, how does it get resolved? How can the consumer prove a negative, that is, that the consumer did NOT authorize the charge to their account? This is a huge step backward for consumers.

C.
Checking accounts have become vehicles of unlimited consumer liablitly, via the fee structures imposed by banks. Charter Bank, for example, imposes a $30 NSF fee every 3 days that an account is "overdrawn". In a case of a fraudulent draw on a consumer's account, the consumer faces potentially

devastating liabilities. At one time, not that long ago, checking accounts could be considered "safe". That is, one could not lose more money than one had on deposit in the account. With the advent of "electronified checks" and banking fees, this is no longer true. In fact, a checking account now has fewer protections than a credit card.

3. Summary

As I read your brief to the regulation changes, it became obvious that the consumer's time in resolving disputes is not considered significant. Just the opposite is the case. Typically, a consumer's time, manpower and financial resources are virtually nil compared to those of the massive institutions they deal with. I urge you to put a stop to the concept of check electronification. Alternatively, put a regulation in place that limits the total potential liability of a checking account in some meaningful way, perhaps fractionally proportionate to the average balance of the account.

4. About Me

I am just an ordinary consumer who was shocked to find my credit card company "electronifying" my checks. I do not recall ever authorizing this. Further, I never authorized my bank to accept electronic debits. I thought they had to compare my signature on the signature card to the one on the check before letting my money out. I still don't know why they are allowed to do electronic debits. It isn't in their account pamphlet. I guess I need to go back and read Reg E or something.

As I looked into the credit card company's (Capital One) authority to electronify checks, I became even more upset at how the banking/merchant industry is eroding the barriers I thought I had to protect my assets. I'm all for efficiency, but not in cases when significant benefits are lost. "Electronifying checks" is in the latter category.